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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

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In the Matter of)		FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
Amendment of Section 73.202(b))	MD Dooket No	
Table of Allotments)	MB Docket No	
FM Broadcast Stations (Statesville and Clemmons, North Carolina))	RM	
To: Assistant Chiet, Audio Division Media Bureau	·		

PETITION FOR RULE MAKING

Mercury Broadcasting Company, Inc. ("Mercury"). licensee of WFMX(FM), by its counsel, hereby requests that the Commission amend the FM Table of Allotments to delete Channel 289C from Statesville, North Carolina and allot Channel 289C1 at Clemmons, North Carolina as that community's first local service. If this Petition is granted, Mercury will file an application for Channel 289C1 at Clemmons, and will construct the facilities if its application is granted. No further changes are required in order to effectuate this reallotment. The following table summarizes the changes requested in this Petition:

City	Cl	nannel	
	Existing	Proposed	
Statesville, North Carolina Clemmons, North Carolina	289C	+	014
Clemmons, North Carolina		289C1	NB
Technical Analysis			03-28

A. Technical Analysis

As demonstrated in the Engineering Exhibit, Channel 289C1 can be allotted to 1. Clemmons, North Carolina at coordinates 36-17-30 North Latitude, 80-15-30 West Longitude consistent with Section 73.207 of the Commission's Rules. See Figure 1. A 70 dBu signal can be provided to Clemmons from the proposed reference point. See Figure 2. The new coverage 97112v1

area will reach 401,070 persons with a 60 dBu signal in an area of 6,999 sq. km not currently receiving the signal *See* Engineering Exhibit. The loss area will remain well served, with the entire loss area retaining five or more aural services. *See* Engineering Exhibit.

B. Change in Community of License

- 2. Mercury desires to change the community of license for Station WFMX from Statesville to Clemmons under the guidelines set forth in Amendment of rhe Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 3870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Community of License"). There, the Commission slated that a station may change its community of license without subjecting the licensee to competing expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria arc met here. First, the proposed use of Channel 289C1 at Clemmons is mutually exclusive with the current use of Channel 289C at Statesville. See Figure 1. Second, Statesville will not be deprived of its only local service because WAME(AM), 1360 kHz, WSIC(AM), 1400 kHz, and WKKT(FM), Channel 245C, will remain licensed to Statesvillc. Third, the provision of a first local service at Clemmons (population 13,827) under Priority 3 will result in a preferential arrangement of allotments over the retention of a fourth local service at Statesville (pop. 23,320) under Priority 4 (all population figures taken from the 2000 U.S. Census). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).
- Clemmons is located within the Winston-Salem Urbanized Area. In addition, the proposed 70 dBu contour will encompass more than 50% of the Greensboro and High Point 2

Urbanized Areas. However, the current 60 dBu signal covers more than 50% of the Charlotte and Gastonia, North Carolina Urbanized Areas. See Headland, Alabama and Chattahoochee. Florida, 10 FCC Rcd 10352 (1995). Thus, the proposal can not be considered as one moving from a rural to an urban area. Nevertheless, a Tuck showing is provided. In such cases, the Commission will consider the extent the station will provide service to the entire Urbanized Area, the relative populations and proximity of the suburban and central city, and, most importantly, the independence of the suburban community. In this case, from the proposed transmitter site, WFMX would place a 70 dBu contour to 100% of the Winston-Salem Urbanized Area, 67%) of the Greensboro Urbanized Area, and 68.2% of the High Point Urbanized Area. Clemmons, located in Forsyth County, is 15.15 kilometers from Winston-Salem, located in Forsyth County, 35.62 kilometers from High Point, located in Guilford County, and 52.49 kilometers from Greensboro, located in Guilford County. The 2000 Census population of Clemmons (13,827) is 7.4% of the population of Winston-Salem (185,776), 16.1% of the population of High Point (85,839) and 6.1% of the population of Greensboro (223,891). These figures are similar to those of other suburban communities granted a first local preference. See, e.g., Anniston, Alabama, et al., 16 FCC Rcd 3411, aff'd by the Commission, 16 FCC Rcd 198.57 (2001) and cases cited therein. In any cycnt, the Commission has repeatedly stated that these factors are less important than evidence of independence. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Red 10352 (1995). The following analysis of the eight Tuck factors demonstrates the independence of Clemmons from Greensboro, High Point, and Witiston-Salem and its Urbanized Areas.

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Faye and Richard Tuck, 3 FCC Red 5374 (1988).

- (1) Extent to which the residents of Clemmons, North Carolina. work in the Village of Clemmons. The population of Clemmons, North Carolina, was 13,827 in 2000 (2000 U.S. Census Bureau). This represents an increase of 130% from the 1990 U.S. Census figure of 6,020. According to the 2000 U.S. Census Database, 1,258 of the 6,913 workers, or 18.2%, work in their place of residence. See Exhibit A. See Anniston, Alabama, supra (16% of the residents of College Park worked in College Park); Albemarle and Indian Trail, North Carolina, 16 FCC Red 13876, 13880 (2001) (11.3% of working-age residents worked in community); Coolidge and Gilbert, Arizona, 11 FCC Red 3610 (1996) (6%). See Exhibit A.
- (2) Newspapers and other media that cover Clemmons' needs and interests.

 The Clemmons Courier is a weekly newspaper published each Thursday that serves Clemmons. According to Kay Henderson of the Clemmons Courier, the newspaper has a circulation of 13,500 and contains local news including articles on topics such as local government, local business and community news.

In addition, the Village of Clemmons maintains its own webpage at <a href="

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from Greensboro, High Point and Winston-Salem. The Village of Clemmons has its own unique identity and history that is separate from those of Greensboro, High Point, and Winston-Salem. Clemmons is located Forsyth County encompassing 12 square miles. The Village of Cleinmons was founded in 1802. Last year, the Village celebrated its bicentennial. The village is named after Peter Clemmons who moved his family to the area from Dclaware acquiring 216 acres of land in 1802. Clemmons was incorporated as a municipality in December 1986. See Exhibit A.

The Village publishes a link on its website specifically for new residents. There, new residents can find information about the quality of life in the Village, programs and services offered by the Village and information about park and trails, police services, road maintenance. trash and recycling, recreational activities and local events. See Exhibit A.

the village webpage, the government of the Village of Clemmons functions iridependently of any other governmental units, and operates under a council/manager form of government. The village council has legislative authority and is responsible for making policy. The Village has a mayor and five council members. The mayor and one council member are elected to two-year terms with the remainder elected to four-year terms. Council meetings are held on the second and fourth Monday of the month. The Village Council is the governing body of the village, passing ordinances, adopting an annual budget, hiring a Village Manager and appointing volunteers to several village boards and commissions. The Village Manager is responsible for implementation of

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policies and ordinances, supervision of Village employees and day-to-day operations of the Village. Among the Village's administrative offices and departments are: Town Clerk and Personnel Office, Waste Management, Finance, and Town Manager. Among the municipal services provided by the Village are: inspections, permits, zoning, site plans, garbage collection, recycling, leaf/limb pickup, bulk pickup, street lights, and street maintenance. The Village Council appoints the Clemmons Appearance Commission, Zoning Board of Adjustment, and Clemmons Planning Board. See Exhibit A. According to the village website, the 2001-2002 fiscal year budget for the Village of Clemmons was approximately 53,000,000.

- (5) The Village of Clemmons has its own zip code and separate governmental listings in the local telephone company. The zip code designated exclusively for the Village of Clemmons is 27012. The U.S. Postal Service operates the Clemmons Main Office at 3630 Clemmons Road. See Exhibit A. According to Clemmons Branch Librarian, residential and husiness listings for Clemmons are found in the Winston-Salem/Forsyth County Telephone Directory published by BellSouth, which contains a separate hluc pages section for the Clemmons government listings. See Exhibit A. High Point and Greensboro have their own separate telephone directories, although BellSouth publishes a combined yellow pages directory that has listings from all these communities.
- (6) The Village of Clemmons has its own commercial establishments and health facilities. Clemmons is home to a variety of businesses and commercial establishments. A number of these businesses identify with the community by using "Clemmons" in their name, for example: Cleinmons Union 76, Clemmons Auto Service, Clemmons Accounting Service, Clemmons Carpet Co., Clemmons Country Store.

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Clemmons Discount Furniture, Cleinmons Exxon Tiger Mart, Optometry, Clemmons Florists and Gifts, Clemmons Food & Grocery, Clemmons Towing and Clemmons Travel. Clemmons retail businesses include: Advanced Communications Electronics, ASG Engineering, P.A., Village Candle Factory, Water Works, English's Bride and Formal Wear and Tops Travel. Banks include Central Carolina Bank & Trust Company, Piedmont Federal Savings and Loan Association and First Citizens Bank. Dining establishments include Cherries Café, Chester's Grille, Dine by Design and Mi Pueblo. Clemmons has numerous inns, hotels and motels such as Holiday Inn Express, Super 8 Motel and The Village Inn Golf and Conference Center. See Exhibit A.

There are several health care providers located in the Village of Clemmons.

Medical services are provided by Clemmons Chiropractic, Clernmons Family Care,

Clerninons Family Practice and by several sole practitioners. Clemmons Veterinary

Clinic provides veterinary services. See Exhibit A.

Clemmons is also home to a number of religious organizations, such as Clemmons First Baptist Church, Clemmons United Methodist Church, Holy Family Catholic Church, Church of Christ, Hope Moravian Church, Clemmons Moravian Church, Clemmons Presbyterian Church and Immanuel Lutheran Church. See Exhibit A. Civic organizations in Clemmons include Clemmons Rotary Club, Clemmons Kiwanis Club, Clemmons Business Association, Clemmons Civic Club, Clemmons Friends of the Library and Clemmons Historical Society. Community activities and events that occur in the Village of Clemmons include: Cleinrnons Fall Street Clean and Tanglewood Festival of Lights. See Exhibit A.

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- (7) Clemmons is a separate and distinct advertising market from Greensboro and Winston-Salem. According to Ms. Henderson, local businesses in Clemmons advertise in The Clemmons Courier, which enables them to reach the residents of Clemmons, and do not rely solely on Greensboro, High Point, or Winston-Salem media sources. Residents may also access the Village's webpage to learn about community events and news. Thus, the residents of Clemmons do not need to seek out Greensboro, High Point. or Winston-Salem media sources in order to find what is happening in their community. See Exhibit A.
- (8) Clemmons has its own library and its police und fire protection ure provided independent of any other jurisdiction. Part of the Forsyth Library system, the Clemmons Branch Library serves the local population. The library is open six days a week. It has a meeting room, an extensive book and publications collection, computer and Internet access and book-on-tape and video collection. The library has a total collection of 36,459 items. The library has several programs for children and adults. See Exhibit A.

The Forsyth County Schools system provides public school education to the children of Clemmons. The school system has the following schools located in Clemmons: Clemmons Elementary School, Clemmons Middle School and West Forsyth High School. See Exhibit A.

Police protection for the Village of Clemmons is contracted out to the Forsyth County Sheriff's Department. It operates a sub-station in Clemmons. See Exhibit A. The Clemmons Area Fire Department was rounded in 1951. The department is currently

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composed of 48 full-time personnel. The department provides fire, rescue and emergency medical services to the village. See Exhibit A

4. Mercury reiterates that the it will apply for Channel 289C1 at Clemmons and construct the facilities if its application is granted.

II. CONCLUSION

Grant of this petition is in the public interest because Clemmons, North Carolina will receive its first local service and 401.070 people will receive new radio service. The Commission should promptly issue a Notice of Proposed Rule Making as described herein

Respectfully submitted,

MERCURY BROADCASTING COMPANY, INC.

By:

Harry C. Martin

Fletcher Heald & Hildreth, PLC

1300 North 17' Street

11th Floor

Arlington, VA 22209-3801

(703) 812-0415

Its Counsel

March 6. 2003

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MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT GAITHERSBURG, MD 20077

ENGINEERING EXHIBIT EE-RM:

RULE MAKING TO AMEND FM TABLE OF ALLOTMENTS

DELETE CH. 289C AT STATESVILLE, NC ALLOT CH. 289C1 TO CLEMMONS. NC

FEBRUARY 26, 2003

ENGINEERING STATEMENT PREPARED ON BEHALF OF MERCURY BROADCASTING COMPANY, INC.

LICENSEE OF WFMX (FM)

CHANNEL 289C - STATESVILLE, NORTH CAROLINA

facility ID: 501

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE-RM:

RULE MAKING TO AMEND FM TABLE OF ALLOTMENTS

DELETE CH. 289C AT STATESVILLE, NC ALLOT CH. 289C1 I O CLEMMONS, NC

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- 4. Figure 2, Existing vs: Proposed Coverage Map
- 5. Figure 3, Distances to Urbanized Areas

MULLANEY ENGINEERING, INC.

Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a

B.E.E. and my qualifications are known to the Federal Communications Commission.

and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that

I have provided engineering services in the area of telecommunications since 1977.

My qualifications as an expert in radio engineering arc a matter of record with the

Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Mercury Broadcasting

Company, liic., to prepare the instant engineering exhibit in support of a rule making

petition to aincid the FM Table of Allotments (FCC Facility ID Number: 501).

All facts contained herein arc true of iny own knowledge except where stated to he on

information or helief, and as to those facts, I believe them to be true. I declare under

penalty of perjury that the foregoing is true and correct.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

Executed on the 26th day of February 2003

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE-RM:

RULE MAKING TO AMEND FM TABLE OF ALLOTMENTS

DELETE CH. 289C AT STATESVILLE, NC ALLOT CH. 289C1 I O CLEMMONS, NC

NARRATIVE STATEMENT:

This engineering statement has been przpared on behalf of Mercury Broadcasting Company, Inc., licensee of Radio Station WFMX, at Statesville, North Carolina (Facility ID 501). The purpose of this statement is to provide engineering in support of a rule making petition to amend the FM Table of Allotments to delete Ch. 289C at Statesville and re-allot Ch. 289C1 to Clemmons, NC. and to modify the license of WFMX accordingly.

The city of Statesville (Iredell County) will continue to be served by three commercial aural services (2 AMs & 1 FM) and grant of this proposal will result in the first aural service to Clemmons, NC (Forsyth County).

WFMX wishes to point out that the downgrade it seeks is on its existing channel with a proposed location which is less than the separation specified by Section 73.207 and, therefore, it is not necessary to demonstrate the availability of an additional equivalent channel in accordance with Section 1.420(g) of the rules.

The proposed reference point is <u>not</u> within 290 kilometers (180 miles) of a United States Border and, therefore, foreign concurrence is <u>not</u> required.

I

Proposed Reference Site

For the purposes of this rule making WFMX proposes to use a special reference point for the allotment at Clemmons, NC

N. Latitude: 36" 17' 30" NAD-27

W. Longitude: 80° 15' 30"

The proposed reference site will provide an unobstructed view of the city of license, Clemmons, NC and is located close enough (approximately 32 kilometers away) to serve the entire community with the required 3.16 mV/M or 70 dBu contour(reference radius of 50 km). Figure 2 is a 70 & 60 dBu coverage map showing the existing contours using terrain & the proposed contours using reference circles. The coordinates for the city of Clemmons are 36-01-17 / 80-22-56. Because of land use / zoning restrictions, FAA restrictions and locations of existing towers, WFMX requests that the re-allotment only bc granted at coordinates of its choosing.

Channel Allocation Study

Figure I is a Channel Allocation Study from the special reference point proposed for Ch. 289C1 at Clemmons, North Carolina. The study indicates the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. From this study it can he determined that proposed reference point exceeds all of these minimum separations.

It should he noted that the licensed operation of WFMX on Ch. 289C at Statesville, NC, is short spaced to two other stations. 'Ihe first short spacing of 23 km with WFJA on 288A at Sanford. NC, is a pre-1964 grandfathered short spacing governed by Section 73.213(a). The second short spacing of 3 km with WZNY on 289C at Augusta, GA, was requested by WZNY per-Section 73 215. This proposal to re-allot the channel to Clemmons will eliminate both of these existing short spacings.

The licensed site of WFMX is located 64.9 km (40.3 miles) away whereas the required co-channel separation (C to C1) is 270 km (167.8 miles). Therefore, the proposed substitution is in accordance with Section 1.420(g) and is not required to demonstrate the availability of an additional equivalent channel.

Public Interest Showing

The proposed change in community & downgrade to Class C1 facilities will permit WFMX to provide a much needed first service. WFMX presently provides a 60 dBu service to 2,733,625 persons and 22,316 sq.km. Assuming maximum facilities from the special reference point, the C1 facility will provide 60 dBu (72 km reference circle) service to 1,433,845 persons and 16,286 sq.km. This represents a 47.5% loss in population and a 27.0% loss in area. The C1 facility will provide new service (in gain area) to 401,070 persons and 6,999 sq.km. All population figures are based upon 2000 Census.

RM Petition - Clemmons, NC Re-Allotment of Ch. 289C1 for WFMX February 2003

A review of the loss area indicates that it contains the urbanized area of Charlotte & Gastonia, NC. Those two main counties (Mecklenburg & Gaston) encompass 885,819 persons.

The entire loss area was evaluated to determine the number of other aural services which would remain upon deletion of Ch. 289C from Statesville. This analysis indicates that the minimum number of AM & FM stations serving the area is at least five with the vast majority of the loss area receiving 8 to 14 FM stations (not counting AMs). Similarly, it was determined that the gain area is also well served

The city of Clemmons is located in Forsyth County and has a population of 13,827 persons. The allotment of Channel 289C1 will be the first aural service licensed to this community. The city of Statesville will continue to have two licensed AMs (550 & 1400 kHz) and one licensed FM (245C) facilities (for a total of three commercial services) upon grant of this RM petition.

From Figure 2 it can he determined that the both the existing and proposed facilities provide 70 dBu city grade service to 100% of the Winston-Salem urbanised area. In addition, it has been determined that the proposed facilities will also provide 70 dBu service to 68.2% of the High Point and to 67.0% of the Greensboro urbanized areas. Figure 3 is a tabulation which provides the distances to these areas from both the special RM reference point and from the reference point for the city of C'lemmons, NC. Based upon this it is necessary for the rule making petition to discuss a "Tuck Analysis". As concluded in the legal section of the petition, WFMX has established that a town of 13,827 persons is indeed independent of the larger towns in the area.

RM Petition - Clemmons, NC Re-Allotment of Ch. 289C1 for WFMX February 2003 MULLANEY ENGINEERING, INC.

Baaed upon the above information, WFMX believes that its request results in a **preferential arrangement** of allotments and therefore, serves the public interest

SUMMARY

Mercury Broadcasting Company, Inc., licensee of Radio Station WFMX, at Statesville, North Carolina (Facility ID 501) requests that the FM Table of Allotments be amended to delete Ch. 289C at Statesville and re-allot Ch. 28961 to Clemmons, NC and to modify the license of WFMX accordingly.

	Present	Proposed
Statesville, NC	245C, 289C	245C
Clemmons, NC		289C1

WFMX believes that the proposed change in community and establishment of a new first service facility will serve the public interest. If granted, WFMX will quickly file an application for construction permit

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

February 26. 2003

MERCURY BROADCASTING RADIO STATION WHMX (FM)

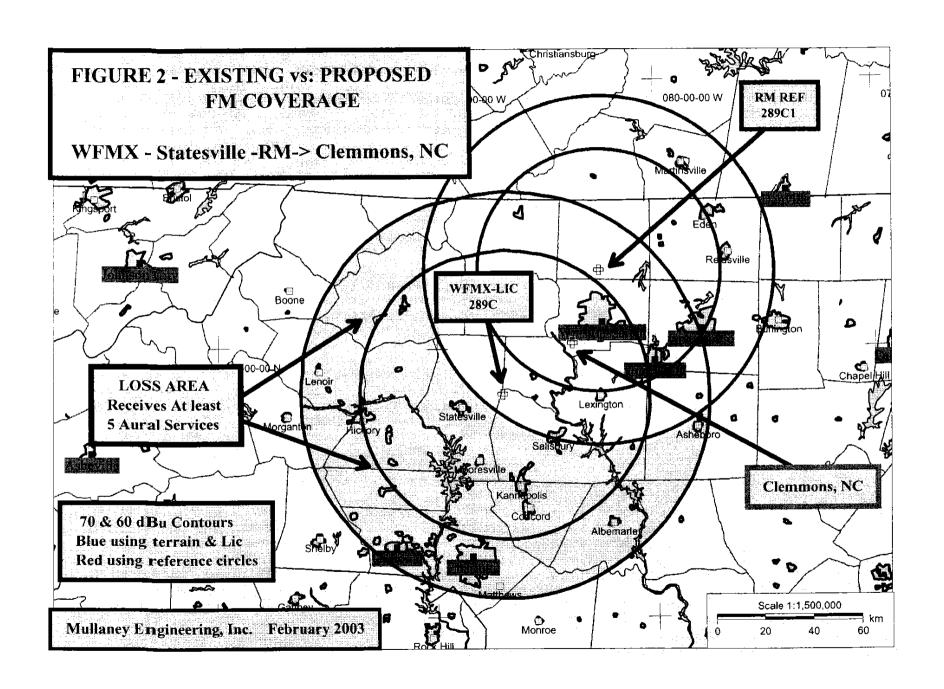
Call	Cha	nnel	Location		Dist	Azi	FCC	Margin
WFMX	1'IC	289C	Statesville	NC	64.90	218.2	270.0	Self
WFJA WKDEFM WTNJ WDCG WBRW WBRW .A ALLO WLNI ALLO WGLHFM WMNAFM WGOR	LIC LIC LIC LIC-Z APP VAC LIC RSV LIC LIC LIC	288A 288A 290B 286C 287C3 287C3 286C1 290A 291C3 288A 292A 289A	Sanford Altavista Mount Hope Durham Blacksburg Blacksburg Durham Lynchburg Jefferson Richlands Gretna Elizabethtown	NC VA WV NC VA NC VA NC VA NC VA NC	133.36 133.50 195.60 109.49 101.30 101.30 109.49 161.58 105.54 165.59 108.78 236.93	134.9 43.3 335.2 114.9 348.8 348.8 114.9 38.3 281.8 305.9 49.3 140.9	133.0 133.0 195.0 105.0 76.0 82.0 133.0 76.0 133.0 75.0 200.0	27.49 28.58 29.54 32.59
-/					-	-		

CHANNEL STUDY - 289C1 - SPECIAL REFERENCE

RADIO STATION WFMX (FM)
RULE MAKING
ADD 289C1 - CLEMMONS. NORTH CAROLINA

MULLANEY ENGINEERING. INC. GAITHERSBURG. MARYLAND

FIGURE 1 FEBRUARY 2003



From Proposed Special Reference Point for Clemmons, NC

REFERENCE LAT: 36-17-30.0

LON: 80-15-30.0

	NAME / LOCA	-	LATITUDE LONGITUDE	BEARING FROM REF. TO REF.	DISTANCE MI./KM.
1	RM Special Referen	ce	36-17-30.0 80-15 30.0	0.00	0.00
2	Clemmons, NC		36-01-17.0 80-22-56.0	200.35 20.27	19.88 31.99
3	Greensboro, NC	(UA)	36-02-00.0 79-48-00.0	124.78 305.06	31.21 50.22
4	High Point, NC	(UA)	35-54-00.0 80-01-00.0	153.43 333.5 7	30.20 48.60
5	Winston Salem, NC	(UA)	36-05-59.0 80-14-40.0	176.65 356.66	13.26 21.33

From City Reference Point for Clemmons, NC

REFERENCE LAT : 36-01-17.0

LON: 80-22-56.0

NAME / LOCATION			LATITUDE LONGITUDE	BEARING FROM REF. TO REF.	DISTANCE
	*******	*****	*******	******	•• 5 5 5
1	RM Special Reference	ce	36-17-30.0 80-15-30.0	20.27 200.35	19.88 31.99
2	Clemmons, NC		36-01-17.0 80-22-56.0	0.00	0.00
3	Greensboro, NC	(UA)	36-02-00.0 79-48-00.0	88.38 268.72	32.62 52.49
4	High Point, NC	(AU)	35-54-00.0 80-01-00.0	112.20 292.41	22.13 35.62
5	Winston-Salem, NC	(UA)	36-05-59.0 80-14-40.0	54.84 234.92	9.416 15.153

DISTANCES TO URBANIZED AREAS

RADIO STATION WFMX (FM)
RULE MAKING
ADD 289C1 - CLEMMONS, NORTH CAROLINA

MULLANEY ENGINEERING, INC. GAITHERSBURG, MARYLAND

DEADIMO

FIGURE 3
FEBRUARY 2003